

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04CV412-02-V
(3:99CR190-V)

KENNETH POWELL,)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
Defendant.)	
_____)	

THIS MATTER comes before the Court on the petitioner's Motion to Vacate under 28 U.S.C. § 2255, filed August 19, 2004; on the "Government's Answer . . . And Motion For Summary Judgment," filed July 8, 2005; and on the petitioner's letter motion by which he requests additional time in which to respond to the government's Motion, filed July 18, 2005. After careful consideration of the petitioner's Motion to Vacate and the government's Motion, the Court has determined that the respondent may be entitled to a summary judgment as a matter of law.

PETITIONER POWELL, PLEASE READ THIS CAREFULLY:

The petitioner is advised that under the provisions of Rule 56(e) of the Federal Rules of Civil Procedure, he is required to submit documents, affidavits, or unsworn declarations made under penalty of perjury, in opposition to the Motion for Summary Judgment and supporting documents filed by the respondent. Rule 56(e) reads in pertinent part as follows:

When a motion for summary judgment is made and supported [by affidavits], an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing that there is genuine issue for trial. If he does not respond, summary judgment, if appropriate, shall be entered against him.

This rule requires that if the petitioner has any evidence to offer to counter the evidence contained in the Motion for Summary Judgment and supporting documents filed by the respondent, he must present it to the Court in the form of documents, affidavits, or unsworn declarations under penalty of perjury. An affidavit is a written statement made under oath; that is, a statement prepared in writing by the petitioner and sworn before a Notary Public. If the petitioner chooses, he may instead submit an unsworn declaration and state the following with the date and his signature:

"I declare under penalty of perjury that the foregoing is true and correct."

The petitioner is further hereby advised that he has thirty (30) days from the filing of this Order in which to file such documents, affidavits, or unsworn declarations in opposition to the respondent's Motion for Summary Judgment. **FAILURE TO RESPOND WITHIN THIS TIME PERIOD MAY SUBJECT THIS ACTION TO SUMMARY JUDGMENT.**

NOW, THEREFORE, IT IS HEREBY ORDERED:


1. That the petitioner has thirty (30) days from the filing

of this Order in which to provide his own documents, affidavits, or declarations countering the evidence offered by the respondent's Motion for Summary Judgment; and

2. That the petitioner's letter motion for an extension of time is **DISMISSED** as moot.

SO ORDERED.

Signed: August 10, 2005

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the name.

Richard L. Voorhees
United States District Judge

